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(ii) To inspect products prior to their distribution in commerce;

(iii) [Reserved]

(iv) To inspect and photograph any part or aspect of any such product and any component used in the assembly thereof that are reasonably related to the purpose of his entry;

(v) To obtain from those in charge of the facility or site such reasonable assistance as he may request to enable him to carry out any proper function listed in this section.

(2) [Reserved]

(3) The provisions of this section apply whether the facility or site is owned or controlled by the manufacturer or by one who acts for the manufacturer.

(d) For purposes of this section:

(1) An “EPA Enforcement Officer” is an employee of the EPA Office of Enforcement who displays upon arrival at a facility or site the credentials identifying him as such an employee and a letter signed by the Director, Noise Enforcement Division designating him to make the inspection.

(2) Where test product storage areas or facilities are concerned, “operating hours” shall mean all times during which personnel other than custodial personnel are at work in the vicinity of the area or facility and have access to it.

(3) Where facilities or areas other than those covered by paragraph (d)(2) of this section are concerned, “operating hours” shall mean all times during which product manufacture or assembly is in operation or all times during which product testing or maintenance, production, or compilation of records is taking place, or any other procedure or activity related to selective enforcement audit testing or to product manufacture or assembly is being carried out.

(e) The manufacturer shall admit to a facility or site an EPA Enforcement Officer who presents a warrant authorizing entry. In the absence of such warrant, entry to any facility or site under this section will be only upon the consent of the manufacturer.

(1) It is not a violation of this regulation or the Act for any person to refuse entry without a warrant.

(2) The Administrator or his designee may proceed ex parte to obtain a warrant whether or not the manufacturer has refused entry.

(42 U.S.C. 4905, 4912, 86 Stat. 1237–1239, 1244)

[41 FR 2172, Jan. 14, 1976, as amended at 43 FR 27989, June 28, 1978; 47 FR 57711, Dec. 28, 1982]

§ 204.5 Exemptions.

§ 204.5–1 Testing exemption.

(a) A new product intended to be used solely for research, investigations, studies, demonstrations or training, and so labeled or marked on the outside of the container and on the product itself, shall be exempt from the prohibitions of sections 10(a) (1), (2), (3), and (5) of the Act.

(b) No request for a testing exemption is required.

(c) For purposes of section 11(d) of the Act any testing exemption shall be void ab initio with respect to each new product, originally intended for research, investigations, studies, demonstrations, or training, but distributed in commerce for other uses.

[47 FR 57711, Dec. 28, 1982]

§ 204.5–2 National security exemptions.

(a) A new product which is produced to conform with specifications developed by a national security agency, and so labeled or marked on the outside of the container and on the product itself, shall be exempt from the prohibitions of sections 10(a) (1), (2), (3), and (4) of the Act.

(b) No request for a national security exemption is required.

(c) For purposes of section 11(d) of the Act, any national security exemption shall be void ab initio with respect to each new product, originally intended to be produced to conform with specifications developed by a national security agency but distributed in commerce for other uses.

(d) Any manufacturer or person subject to the liabilities of section 11(a) with respect to any product originally intended for a national security agency, but distributed in commerce for use in any State, may be excluded from the

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application of section 11(a) with respect to such product based upon a showing that such manufacturer:

(1) Had no knowledge of such product being distributed in commerce for use in any state; and

(2) Made reasonable efforts to ensure that such products would not be distributed in commerce for use in any State. Such reasonable efforts would include investigation, prior dealings, contract provisions, etc.

[47 FR 57711, Dec. 28, 1982]

§ 204.5-3 Export exemptions.

(a) A new product intended solely for export, and so labeled or marked on the outside of the container and on the product itself, shall be exempt from the prohibitions of section 10(a), (1), (2), (3), and (4) of the Act.

(b) No request for an export exemption is required.

(c) For purposes of section 11(d) of the Noise Control Act, any export exemption under section 10(b)(2) shall be void ab initio with respect to each new product intended solely for export which is distributed in commerce for use in any state.

(d) The Administrator will not institute proceedings against any manufacturer pursuant to section 11(d)(1) of the Noise Control Act with respect to any product, originally intended for export, but distributed in commerce for use in any state, if it is demonstrated to the Administrator's satisfaction that:

(1) The manufacturer had no knowledge that such product would be distributed in commerce for use in any state; and

(2) The manufacturer made reasonable efforts to ensure that such product would not be distributed in commerce for use in any state. Such reasonable efforts would include consideration of prior dealings with any person which resulted in introduction into commerce of a product manufactured for export only, investigation of prior instances known to the manufacturer of introduction into commerce of a product manufactured for export only, and contract provisions which minimize the probability of introduction into com-

merce of a product manufactured for export only.

[41 FR 2172, Jan. 14, 1976, as amended at 42 FR 61454, Dec. 5, 1977. Redesignated at 47 FR 57711, Dec. 28, 1982]

Subpart B—Portable Air Compressors

§ 204.50 Applicability.

The provisions of this subpart shall apply to portable air compressors which are manufactured after the effective dates specified in § 204.52, and which are "New Products" as defined in the Act. These provisions apply only to portable air compressors with a rated capacity equal to or above 75 cubic feet per minute which deliver air at pressures greater than 50 psig. The provisions do not apply to the pneumatic tools or equipment that the portable air compressor is designed to power.

§ 204.51 Definitions.

(a) *Portable air compressor* or *compressor* means any wheel, skid, truck, or railroad car mounted, but not self-propelled, equipment designed to activate pneumatic tools. This consists of an air compressor (air end), and a reciprocating rotary or turbine engine rigidly connected in permanent alignment and mounted on a common frame. Also included are all cooling, lubricating, regulating, starting, and fuel systems, and all equipment necessary to constitute a complete, self-contained unit with a rated capacity of 75 cfm or greater which delivers air at pressures greater than 50 psig, but does not include any pneumatic tools themselves.

(b) *Maximum Rated Capacity* means that the portable air compressor, operating at the design full speed with the compressor on load, delivers its rated cfm output and pressure, as defined by the manufacturer.

(c) *Model year* means the manufacturer's annual production period which includes January 1 of such calendar year; Provided, that if the manufacturer has no annual production period, the term "model year" shall mean the calendar year.